



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/141343

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2012, under Wis. Admin. Code §DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, specifically the Family Care Program (FCP), a telephonic hearing was held on August 07, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the FCP by way of the Care Management Organization (CMO), Community Care Inc. (CCI), has met its burden to show that it correctly denied petitioner's request for evening socialization services (4 times per month) through Portal Recreation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jennifer Mathwig, Regional Director for FCP
Community Care Inc.
1333 West Towne Square Road
Mequon, Wisconsin 53092

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County. She is developmentally disabled and nonambulatory. She uses a wheelchair for mobility.

2. Petitioner receives supervision and supports in her CBRF. She participates in day programming 5 days per week.
3. Petitioner has been receiving evening socialization services (4 times per month) through Portal Recreation for approximately 3 years.
4. On April 24, 2012 the FCP Interdisciplinary Team (IDT) performed a Resource Allocation Decision (RAD) for continuing the evening socialization services. See Exhibit 2. The assessment led the IDT to deny the services because it found that petitioner's socialization needs were already being met in her CBRF with activities provided there, and for her to continue to be active in her community with going to church, volunteering, friendship group, Special Olympics, library, shopping and day programming.
5. On April 26, 2012 the FCP issued a notice of decision to petitioner explaining that it was denying the evening socialization services (4 times per month) through Portal Recreation effective June 1, 2012 because it was already supporting the petitioner's needs in another way . Exhibit 1.
6. Petitioner's FCP Care Plan identified the following outcome statement for the period of February 1, 2012 to July 31, 2012: "I want to get help with exercising my legs so that I can increase my strength." Exhibit 4b.

DISCUSSION

The Family Care Program (FCP) is a subprogram of Medicaid which is supervised by the Department of Health Services (DHS) and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes at §46.286, and is described in the Wisconsin Administrative Code, Chapter DHS 10. Some policy guidance can be found in the *Medicaid Eligibility Handbook* (MEH), which is available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>, §29.1.

The FCP benefit is available to eligible persons only through enrollment in a care management organization (CMO). Wis. Adm. Code §DHS 10.41(1). The terms CMO and MCO (Managed Care Organization) are often used interchangeably in the FCP. Services provided under the FCP are determined through an individual assessment of enrollee needs and values and detailed in an individual service plan (ISP) unique to each enrollee. Each CMO:

shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. [46.275](#), [46.277](#) and [46.278](#), Stats., the long-term support community options program under s. [46.27](#), Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Wis. Adm. Code §DHS 10.41(2). Thus, while the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. See Wis. Adm. Code, §DHS 10.44(1)(f).

The issue in this case is whether the CMO - Community Care, Inc. - acted correctly in denying petitioner's request for continuing her evening socialization services (4 times per month) through Portal Recreation. The agency's notice cited DHS §10.44(2)-(3) as the basis for its decision. Those provisions relate to the CMO's case management standards and the monitoring of service providers. I do not see authority in those provisions for the denial here. Rather, I find authority to deny for cost-effectiveness in the section I

cited above which says they should be cost-effective services so long as her needs are being met, as identified in the service plan. See Wis. Adm. Code §DHS 10.41(2).

The petitioner advocated for herself at hearing. She testified as to the meaningful activities that she would be missing now that those evening services were discontinued. She described missing her friends, the doggie olympics, movies, fancy restaurants, and her boyfriend. Petitioner's care plan is meant to identify and address all of her identified long-term care outcomes. Petitioner's plan refers to her socialization needs as follows: "Debbie continues to do volunteer activities at her church as a greeter when available. She has adjusted well to attending ADS [adult day services] fulltime at Portal...She will continue to participate in Portal services for socialization skills." Exhibit 4b. I note that Portal Recreation provides both the day services she receives (which includes work and community outings) and the 4-times-per-month evening recreation services she seeks here. She testified that she no longer shops or goes to the library alone because her CBRF has found it unsafe for her to be out in the community alone as she has had at least one instance of "getting stuck" in her wheelchair and requiring assistance. She also testified that she does see her boyfriend on occasion to shop or go to church, or if his mother drives him to petitioner's CBRF.

The CMO presented a provision of the contract that this CMO has with petitioner's CBRF, and with all of its community residential providers. See Exhibit 3. I add that the CMO stated that this contract provision was developed in January of 2012, thus, the CMO had not previously been authorizing services with this consideration in mind. In that contract provision, the CBRF agrees to include in its scope of services:

Activities, Socialization and Access to Community Activities – including facility Leisure Activities, Community Activities Information and assistance with accessing, and assistance with socialization with family and other social contacts.

Id. Indeed, the CMO also provided the schedule of events planned at the CBRF for two months. See Exhibit 4a. Of those many evening activities are included shopping, bowling, bingo, dinner and a movie night, doggie olympics, musicals, Brewers games, fish fry's, and crafting. Id.

The evidence here does not support a finding that the petitioner's identified socialization needs are not being met in other ways. While I understand petitioner's position, MA is not meant to provide every service that an individual desires. She is provided with the day programming (which includes work and community outings that she said she participated in almost daily) through Portal and with evening socialization services through her CBRF. Those evening services do not appear to be much, if at all, different than what she was receiving through Portal's evening services. She also testified to opportunities she has to still see her boyfriend, and while she does not necessarily 'socialize' during work, the day program also allows for community outings where she can maintain those friendships she has developed through Portal.

Based on the evidence before me, I find the CMO acted correctly here. The weight of the evidence before me leads me to conclude that the services petitioner is receiving are meeting her needs and identified outcomes in a cost-effective manner. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

CCI has met its burden to show that it correctly denied petitioner's request for evening socialization services (4 times per month) through Portal Recreation as that outcome is being addressed through other services she receives.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

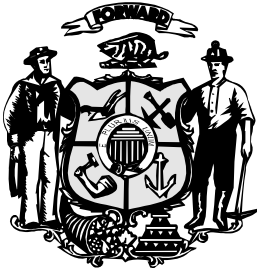
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of September, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Community Care Inc. - email
Department of Health Services – email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 20, 2012.

Community Care Inc.
Office of Family Care Expansion